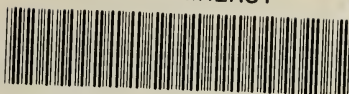


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Guide to the

Conflict of Interest Law

for Municipal Employees

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The Massachusetts Conflict of Interest Law

The conflict of interest law (Chapter 268A of the General Laws) sets a minimum standard of ethical conduct for all municipal employees and officials. Enacted in 1962, the conflict law's goal is to promote confidence in our government and in the integrity of its officials.

The Massachusetts State Ethics Commission

The State Ethics Commission was established in 1978 by the Legislature as an independent civil enforcement agency to enforce the conflict of interest and financial disclosure laws.

The Commission is a bipartisan, five-member board appointed by the Governor, the Secretary of State and the Attorney General. The members serve part-time for staggered five year terms. The Commissioners appoint an Executive Director who heads a full-time staff in four divisions: Enforcement, Legal, Public Education and Financial Disclosure.



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Purpose of the Law

The purpose of the conflict law is to ensure that public employees' private financial interests and relationships do not conflict with their public obligation to act objectively and with integrity. The law is broadly written to prevent a public employee from becoming involved in a situation which could result in a conflict or give the appearance of a conflict.

The law covers what you may do on the job, after hours (in your private capacity) and even after you leave public service.

Who the Law Governs

Municipal Employees

The conflict of interest law regulates the official activity of all municipal employees. You are considered a municipal employee if you hold any office, position, employment or membership in any municipal agency or board. It does not matter whether you are elected or appointed, full or part-time, paid or unpaid. People who work as consultants for a municipality are generally covered by the conflict law, as well.

The conflict law also regulates the activities of former employees and business partners of current and former employees. Private parties are subject to the bribery and gift restrictions under the conflict law.

Special Municipal Employees

If you hold a municipal job or position which has been designated as a "special municipal employee" position, two parts of the law - Sections 17 and 20 - will apply less restrictively to you. The city council, town councillor, board of aldermen or board of a selectmen may designate certain municipal employees as "specials."

You may be designated as a special municipal employee if:

1. You are not paid; or
2. You hold a part-time position which allows you to engage in other employment during normal working hours; or
3. you were not paid by the municipality for more than 800 hours during the preceding 365 days.

All employees holding the same office or position must have the same classification, either as a regular or "special" municipal employees.

Under no circumstances may a mayor, city councillor, town councillor, alderman, or selectman in a town with a population of more than 10,000 be designated as a "special." However, in towns of 10,000 or less, selectmen are automatically considered "special" employees. Other municipal positions in towns with a population of less than 10,000 must still be designated as "special municipal employee" positions by the selectmen.

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What the Law Prohibits

Bribes (Section 2)

The conflict law prohibits the most obvious kinds of corruption: bribes. The law imposes criminal penalties, not only on municipal employees who seek or receive payoffs or kickbacks, but also on anyone who bribes or attempts to bribe a public official.

Accepting Gifts (Section 3)

It is illegal to accept anything of "substantial value" from anyone with whom you have had or are likely to have official dealings even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill.

The courts and the Commission have deemed "substantial value" to be \$50 or more. Additional compensation, waived fees, discounts, gift certificates and entertainment are considered gifts. In addition, free or discounted services such as construction or accounting work are considered gifts.

Private parties who offer such inducements or rewards are also subject to penalties under the conflict law.



Acting on Own/Family's/Business' Financial Interests (Section 19)

The law recognizes that your objectivity and integrity can be compromised when you act on matters in which you, your family or your business has a financial stake. The law, therefore, prohibits you from taking action on any "particular matter" which would affect your own financial interest or the financial interest of:

1. your immediate family (your spouse and both of your children, parents, brothers and sisters);
2. your partner(s);
3. a business organization in which you serve as an officer, director, trustee, partner or employee (including a non-profit organization); and
4. any person or organization with whom you are negotiating or have any arrangement concerning future employment.

A "particular matter" is defined by law to include almost any application, contract, finding, decision or controversy which might come before you. The definition refers to specific matters and proceedings rather than general issues. If the matter in which you have a financial stake is a determination of general policy and your interest is shared with a substantial segment of the population, you may participate. An example of a general policy matter is setting local water and sewer rates.

The law forbids nepotism. Nepotism is commonly understood to include favoritism of any sort afforded a relative. Section 19 prohibits a municipal employee or official from participating in any way in the hiring, promotion, performance review or salary recommendation of an immediate family member.

There is an exemption under Section 19 available to appointed municipal employees and officials. You *may* act on a matter in which you, your family or business has a financial stake, provided that you receive written permission from your appointing official *prior* to taking the action. For example, if you receive written permission from your appointing official, you may hire your sister despite the conflict. This exemption is not available to elected officials.

Obtaining Municipal Contracts and Multiple Jobs (Section 20)

Section 20 is intended to ensure that municipal employees do not use their positions to benefit from municipal contracts and to avoid the public perception that municipal employees have an "inside track" on obtaining municipal contracts or jobs.

In general, you are prohibited from holding more than one *paid* town or city position and from contracting with your municipality. (You may hold multiple unpaid positions with the same town.) For example, if you work full-time nights for the police department, you would be prohibited from taking another paid full-time municipal job during the day. If you owned a company which provided cleaning services, your company could not contract with the police department.

There are a number of exceptions to this general rule. For example, you may hold any number of elected paid or unpaid positions and not be in conflict. Special municipal employees may hold multiple paid positions if they meet certain technical requirements. Different criteria apply to selectmen, town clerks and executive secretaries who have second municipal jobs. These and other exemptions cannot be treated comprehensively in this pamphlet; call the Commission or contact your city or town lawyer for specific advice on Section 20.

Misusing Your Official Position (Section 23)

Section 23 provides a general code of ethics for all public employees. Section 23 applies when there is an overlap or a direct connection between a public employee's official responsibilities and his or her private interests or relationships. The overlap can, at a minimum, create the appearance of a conflict.

The conflict law prohibits you from using or attempting to use your municipal position to obtain unwarranted privileges for yourself or anyone else. You also may not, through your actions, give the reasonable impression that you can be improperly influenced or that you will act with bias. The law prohibits you from misusing confidential information obtained on the job and from accepting outside employment which is inherently incompatible with your public position.

Examples of violations of Section 23 include running a private business out of your public office, using municipal resources such as stationery, phones and copiers for political campaigns and putting friends on the payroll who are unqualified.



Representing Private Parties in Town/City Matters (Section 17)

The law limits what municipal employees may do "on the side" for a private party. This section is designed to protect the municipal employee and municipality from the problems resulting when people "serve two masters."

When you are a municipal employee, you may not act as agent or attorney for a private party before your city or town, even if you are not paid. In addition, you may not be paid by a private party in relation to a "particular matter" if any agency in your town or city is a party to that matter or has a direct and substantial interest in it.

For example, if you are a lawyer or engineer, being a municipal employee would preclude you from representing your clients before town or city boards. In addition, you are prohibited from representing your own company or your employer before municipal agencies.

Note: This section of the law applies less restrictively to special municipal employees.



Misusing Government Connections (Section 18)

The conflict law prohibits former employees from deriving unfair advantages by misusing friendships formed or confidential information obtained while serving the government.

1. If you participated in a particular matter as a municipal employee you may *never* work on the same matter for a private party after you leave municipal government. 2. If a matter was under your official responsibility, you are subject to a one year "appearance" restriction. You may not represent a private party before any municipal agency in connection with that matter for one year after leaving the government. 3. There are no restrictions concerning a matter you never dealt with or which was not before your board or agency while you were a municipal employee.

For example, if you negotiated a contract with a computer company to provide computer services for your agency, you may not leave town government and work for the company on the same contract. You may, however, work for that company on other projects. You could also work for the computer company on town contracts proposed and awarded *after* you left your position.

How to Obtain Legal Advice

This pamphlet presents a brief overview of the conflict law and suggests activities which you, as a municipal employee, must avoid. It is not a comprehensive review.

If you have a question about your own activities, we urge you to request an opinion from your town or city lawyer or directly from the Ethics Commission *prior* to engaging in the activity in question. Requests to the Commission for an advisory opinion must be in writing and must be about a real, not hypothetical situation which presents a problem under the conflict of interest law. You may also call the Commission's Legal Division at (617) 727-0060 for informal confidential advice on the conflict law.

If you have questions about others activities in your town or city, urge them to use the opinion process.



Investigations

How to File a Complaint

Anyone can file a complaint concerning a conflict of interest - in person, over the phone or by letter. The Commission keeps the identity of all complainants confidential and the law protects a complainant from retribution for filing a complaint with the Commission.

The Commission can initiate investigations based on these complaints, on referrals from other civil and criminal enforcement agencies or on its own based on information obtained through other sources, such as news reports.

If you believe that a violation of the conflict of interest law has occurred or is occurring, you may call or visit the State Ethics Commission office at Room 619, One Ashburton Place, Boston, (617) 727-0060, and speak with a member of the Commission's enforcement staff.

Investigation Procedures

The Enforcement Division reviews each complaint received. If the complaint falls within the Commission's jurisdiction, an initial "screening" is done to determine if the facts warrant a formal investigation. The screening is an informal fact gathering stage. Many enforcement cases end confidentially at the conclusion of the screening with a private educational letter. In these cases, no formal charge of a violation is brought and the matter remains confidential.

After the screening, if the staff determines a case should be formally investigated, authorization is sought from the appointed Commissioners to conduct such an investigation. During the formal inquiry the Commission

staff has subpoena powers and may take testimony under oath.

After a formal inquiry is conducted the Commissioners vote on whether "reasonable cause" exists to believe that the law has been violated. If the Commissioners find "reasonable cause" the subject of the complaint is entitled to a public hearing before the Commission to hear the evidence against him or her and to present evidence and testimony on his or her own behalf. At the conclusion of a public hearing the Commissioners issue a Decision and Order stating whether there was a violation of the conflict law and what fine, if any, will be assessed. A person has the right to appeal the Commission's decision directly to Superior Court. In the alternative, the person may settle the case by admitting publicly that he or she violated the law and agreeing to pay a civil penalty for each violation.

If the Commission finds "no reasonable cause" to believe the law has been violated, the case is closed and records and proceedings of the investigation remain confidential.

Penalties

The Commission is authorized to impose civil fines of up to \$2,000 per violation of the conflict law. In addition, the Commission may bring a civil action against individuals who have acted to their economic advantage in violation of the law, and may recover on behalf of the commonwealth or a municipality, damages in the amount of the economic advantage. In certain circumstances, the Commission may also recover multiple damages.

Further, any violation which has substantially influenced an action taken by a municipal agency is grounds to void, rescind or cancel that action. For example, if a zoning board approved a variance to allow a

hotel to be built and one of the members was in conflict when he or she voted, the approval of the variance could be rescinded.

The law also carries criminal penalties including fines and terms of imprisonment. Criminal prosecutions under the law are the responsibility of the Attorney General and District Attorneys. The Ethics Commission has the authority to refer cases to or concurrently investigate cases with these other law enforcement agencies, but the Ethics Commission's jurisdiction is limited to civil enforcement of the law.

Public Education

The Public Education Division conducts seminars for municipal employees and officials to help avoid potential conflicts which may arise between an employee's private interests and public positions. The Commission staff will travel anywhere in the state to conduct a seminar tailored to any group of public employees or citizens. The goal of the presentation and question and answer period is to provide an understanding of the basic principles of the law and how to comply with it by discussing "real life" conflicts that arise on the job. Call the Commission to arrange for a seminar in your municipality.

The Commission has available a comprehensive Practical Guide to the Conflict of Interest Law for Municipal Employees, as well as advisories and fact sheets which provide guidance on various aspects of the conflict law. We will mail these publications to you upon request.

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